

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LINDA McGARR,

Plaintiff,

- against -

CITY OF PEEKSKILL, WESTCHESTER  
COUNTY, DAVID LEVINE, THOMAS  
MCINTYRE, WALTER BROVARSKI, EUGENE  
TUMOLO, JOHN AND JANE DOE  
SUPERVISORS, DANIEL STEPHENS, GEORGE  
BOLEN, LOUIS ROH, and MILLARD HYLAND,

Defendants.  
-----X

Docket No. 07 Civ. 9488 (KMK)

**DEFENDANT EUGENE TUMOLO'S  
ANSWER TO FIRST AMENDED  
COMPLAINT AND CROSS-CLAIMS**

Defendant EUGENE TUMOLO, by his attorneys, STILLMAN, FRIEDMAN &  
SHECHTMAN, P.C., as and for his answer to the first amended complaint in the above-captioned  
action, sets forth as follows:

1. Deny the allegations contained in ¶ "1" of the amended complaint.
2. Deny the allegations contained in ¶ "2" of the amended complaint.
3. Deny the allegations contained in ¶ "3" of the amended complaint.
4. Deny the allegations contained in ¶ "4" of the amended complaint.
5. Deny the allegations contained in ¶ "5" of the amended complaint.
6. Deny the allegations contained in ¶ "6" of the amended complaint.
7. Deny the allegations contained in ¶ "7" of the amended complaint.
8. Deny the allegations contained in ¶ "8" of the amended complaint.
9. Deny the allegations contained in ¶ "9" of the amended complaint.

10. Deny the allegations contained in ¶ “10” of the amended complaint, and refer all questions of law to the Court for adjudication.

11. Deny the allegations contained in ¶ “11” of the amended complaint, and refer all questions of law to the Court for adjudication.

12. Deny the allegations contained in ¶ “12” of the amended complaint, and refer all questions of law to the Court for adjudication.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “13” of the amended complaint.

14. Deny the allegations contained in ¶ “14” of the amended complaint, and refer all questions of

15. Deny the allegations contained in ¶ “15” of the amended complaint, and refer all questions of law to the Court for adjudication.

16. Deny the allegations contained in ¶ “16” of the amended complaint , and refer all questions of law to the Court for adjudication.

17. Deny the allegations contained in ¶ “17” of the amended complaint, and refer all questions of law to the Court for adjudication.

18. Deny the allegations contained in ¶ “18” of the amended complaint, and refer all questions of law to the Court for adjudication.

19. Deny the allegations contained in ¶ “19” of the amended complaint, and refer all questions of law to the Court for adjudication.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “20” of the amended complaint, and refer all questions of law to the Court for adjudication.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “21” of the amended complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “22” of the amended complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “23” of the amended complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “24” of the amended complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “25” of the amended complaint, except admit that the family of A.C. contacted the Peekskill Police Department and reported her missing.

26. Deny the allegations contained in ¶ “26” of the amended complaint.

27. Deny the allegations contained in ¶ “27” of the amended complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “28” of the amended complaint.

29. Deny the allegations contained in ¶ “29” of the amended complaint.

30. Deny the allegations contained in ¶ “30” of the amended complaint.

31. Deny the allegations contained in ¶ “31” of the amended complaint.

32. Deny the allegations contained in ¶ “32” of the amended complaint.

33. Deny the allegations contained in ¶ “33” of the amended complaint.

34. Deny the allegations contained in ¶ “34” of the amended complaint.

35. Deny the allegations contained in ¶ “35” of the amended complaint.

36. Deny the allegations contained in ¶ “36” of the amended complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “37” of the amended complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “38” of the amended complaint.

39. Deny the allegations contained in ¶ “39” of the amended complaint.

40. Deny the allegations contained in ¶ “40” of the amended complaint.

41. Deny the allegations contained in ¶ “41” of the amended complaint.

42. Deny the allegations contained in ¶ “42” of the amended complaint.

43. Deny the allegations contained in ¶ “43” of the amended complaint.

44. Deny the allegations contained in ¶ “44” of the amended complaint.

45. Deny the allegations contained in ¶ “45” of the amended complaint.

46. Deny the allegations contained in ¶ “46” of the amended complaint.

47. Deny the allegations contained in ¶ “47” of the amended complaint.

48. Deny the allegations contained in ¶ “48” of the amended complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “49” of the amended complaint.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “50” of the amended complaint.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “51” of the amended complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “52” of the amended complaint.

53. Deny the allegations contained in ¶ “53” of the amended complaint.

54. Deny the allegations contained in ¶ “54” of the amended complaint.

55. Deny the allegations contained in ¶ “55” of the amended complaint.

56. Deny the allegations contained in ¶ “56” of the amended complaint.

57. Deny the allegations contained in ¶ “57” of the amended complaint.

58. Deny the allegations contained in ¶ “58” of the amended complaint.

59. Deny the allegations contained in ¶ “59” of the amended complaint.

60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “60” of the amended complaint.

61. Deny the allegations contained in ¶ “66” of the amended complaint.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “62” of the amended complaint.

63. Deny the allegations contained in ¶ “63” of the amended complaint.

64. Deny the allegations contained in ¶ “64” of the amended complaint.

65. Deny the allegations contained in ¶ “65” of the amended complaint.

66. Deny the allegations contained in ¶ “66” of the amended complaint.

67. Deny the allegations contained in ¶ “67” of the amended complaint.

68. Deny the allegations contained in ¶ “68” of the amended complaint.

69. Deny the allegations contained in ¶ “69” of the amended complaint.

70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “70” of the amended complaint.

71. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “71” of the amended complaint.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “72” of the amended complaint.

73. Deny the allegations contained in ¶ “73” of the amended complaint.

74. Deny the allegations contained in ¶ “74” of the amended complaint.

75. Deny the allegations contained in ¶ “75” of the amended complaint.

76. Deny the allegations contained in ¶ “76” of the amended complaint.

77. Deny the allegations contained in ¶ “77” of the amended complaint.

78. Deny the allegations contained in ¶ “78” of the amended complaint.

79. Deny the allegations contained in ¶ “79” of the amended complaint.

80. Deny the allegations contained in ¶ “80” of the amended complaint.

81. Deny the allegations contained in ¶ “81” of the amended complaint.

82. Deny the allegations contained in ¶ “82” of the amended complaint.

83. Deny the allegations contained in ¶ “83” of the amended complaint.

84. Deny the allegations contained in ¶ “84” of the amended complaint.

85. Deny the allegations contained in ¶ “85” of the amended complaint.

86. Deny the allegations contained in ¶ “86” of the amended complaint.

87. Deny the allegations contained in ¶ “87” of the amended complaint.

88. Deny the allegations contained in ¶ “88” of the amended complaint.

89. Deny the allegations contained in ¶ “89” of the amended complaint.

90. Deny the allegations contained in ¶ “90” of the amended complaint.

91. Deny the allegations contained in ¶ “91” of the amended complaint.

92. Deny the allegations contained in ¶ “92” of the amended complaint.

93. Deny the allegations contained in ¶ “93” of the amended complaint.

- 94. Deny the allegations contained in ¶ “94” of the amended complaint.
- 95. Deny the allegations contained in ¶ “95” of the amended complaint.
- 96. Deny the allegations contained in ¶ “96” of the amended complaint.
- 97. Deny the allegations contained in ¶ “97” of the amended complaint.
- 98. Deny the allegations contained in ¶ “98” of the amended complaint.
- 99. Deny the allegations contained in ¶ “99” of the amended complaint.
- 100. Deny the allegations contained in ¶ “100” of the amended complaint.
- 101. Deny the allegations contained in ¶ “101” of the amended complaint.
- 102. Deny the allegations contained in ¶ “102” of the amended complaint.
- 103. Deny the allegations contained in ¶ “103” of the amended complaint.
- 104. Deny the allegations contained in ¶ “104” of the amended complaint.
- 105. Deny the allegations contained in ¶ “105” of the amended complaint.
- 106. Deny the allegations contained in ¶ “106” of the amended complaint.
- 107. Deny the allegations contained in ¶ “107” of the amended complaint.
- 108. Deny the allegations contained in ¶ “108” of the amended complaint.
- 109. Deny the allegations contained in ¶ “109” of the amended complaint.
- 110. Deny the allegations contained in ¶ “110” of the amended complaint.
- 111. Deny the allegations contained in ¶ “111” of the amended complaint.
- 112. Deny the allegations contained in ¶ “112” of the amended complaint.
- 113. Deny the allegations contained in ¶ “113” of the amended complaint.
- 114. Deny the allegations contained in ¶ “114” of the amended complaint.
- 115. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “115” of the amended complaint.

116. Deny the allegations contained in ¶ “116” of the amended complaint.

117. Deny the allegations contained in ¶ “117” of the amended complaint.

118. Deny the allegations contained in ¶ “118” of the amended complaint.

119. Deny the allegations contained in ¶ “119” of the amended complaint.

120. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “120” of the amended complaint.

121. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “121” of the amended complaint.

122. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “122” of the amended complaint.

123. Deny the allegations contained in ¶ “123” of the amended complaint.

124. Deny the allegations contained in ¶ “124” of the amended complaint.

125. Deny the allegations contained in ¶ “125” of the amended complaint.

126. Deny the allegations contained in ¶ “126” of the amended complaint.

127. Deny the allegations contained in ¶ “127” of the amended complaint.

128. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “128” of the amended complaint.

129. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “129” of the amended complaint.

130. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “130” of the amended complaint.

131. Deny the allegations contained in ¶ “131” of the amended complaint.

132. Deny the allegations contained in ¶ “132” of the amended complaint.



133. Deny the allegations contained in ¶ “133” of the amended complaint.

134. Deny the allegations contained in ¶ “134” of the amended complaint.

135. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “135” of the amended complaint.

136. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “136” of the amended complaint.

137. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “137” of the amended complaint.

138. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “138” of the amended complaint.

139. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “139” of the amended complaint.

140. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “140” of the amended complaint.

141. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “141” of the amended complaint.

142. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “142” of the amended complaint.

143. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “143” of the amended complaint.

144. Deny the allegations contained in ¶ “144” of the amended complaint.

145. Deny the allegations contained in ¶ “145” of the amended complaint.

146. Deny the allegations contained in ¶ “146” of the amended complaint.

147. Deny the allegations contained in ¶ “147” of the amended complaint.

148. Deny the allegations contained in ¶ “148” of the amended complaint, and refer all questions of law to the Court for adjudication.

149. Deny the allegations contained in ¶ “149” of the amended complaint, and refer all questions of law to the Court for adjudication.

150. Deny the allegations contained in ¶ “150” of the amended complaint, and refer all questions of law to the Court for adjudication.

151. Deny the allegations contained in ¶ “151” of the amended complaint, and refer all questions of law to the Court for adjudication.

152. Deny the allegations contained in ¶ “152” of the amended complaint, and refer all questions of law to the Court for adjudication.

153. Deny the allegations contained in ¶ “153” of the amended complaint, and refer all questions of law to the Court for adjudication.

154. Deny the allegations contained in ¶ “154” of the amended complaint, and refer all questions of law to the Court for adjudication.

155. Deny the allegations contained in ¶ “155” of the amended complaint, and refer all questions of law to the Court for adjudication.

156. Deny the allegations contained in ¶ “156” of the amended complaint, and refer all questions of law to the Court for adjudication.

157. Deny the allegations contained in ¶ “157” of the amended complaint, and refer all questions of law to the Court for adjudication.

158. Deny the allegations contained in ¶ “158” of the amended complaint, and refer all questions of law to the Court for adjudication.

159. Deny the allegations contained in ¶ “159” of the amended complaint, and refer all questions of law to the Court for adjudication.

160. Deny the allegations contained in ¶ “160” of the amended complaint, and refer all questions of law to the Court for adjudication.

161. Deny the allegations contained in ¶ “161” of the amended complaint, and refer all questions of law to the Court for adjudication.

### **COUNT I**

162. As and for a response to the allegations contained in ¶ “162” of the amended complaint, defendant repeats and realleges his responses to the allegations contained in ¶¶ “1” through “161” of the amended complaint, as though they were fully set forth herein.

163. Deny the allegations contained in ¶ “163” of the amended complaint, and refer all questions of law to the Court for adjudication

164. Deny the allegations contained in ¶ “164” of the amended complaint, and refer all questions of law to the Court for adjudication.

165. Deny the allegations contained in ¶ “165” of the amended complaint, and refer all questions of law to the Court for adjudication.

166. Deny the allegations contained in ¶ “166” of the amended complaint, and refer all questions of law to the Court for adjudication.

167. Deny the allegations contained in ¶ “167” of the amended complaint, and refer all questions of law to the Court for adjudication.

168. Deny the allegations contained in ¶ “168” of the amended complaint, and refer all questions of law to the Court for adjudication.

169. Deny the allegations contained in ¶ “169” of the amended complaint, and refer all questions of law to the Court for adjudication.

170. Deny the allegations contained in ¶ “170” of the amended complaint, and refer all questions of law to the Court for adjudication.

171. Deny the allegations contained in ¶ “171” of the amended complaint.

172. Deny the allegations contained in ¶ “172” of the amended complaint, and refer all questions of law to the Court for adjudication.

173. Deny the allegations contained in ¶ “173” of the amended complaint, and refer all questions of law to the Court for adjudication.

174. Deny the allegations contained in ¶ “174” of the amended complaint, and refer all questions of law to the Court for adjudication.

175. Deny the allegations contained in ¶ “175” of the amended complaint.

176. Deny the allegations contained in ¶ “176” of the amended complaint, and refer all questions of law to the Court for adjudication.

177. Deny the allegations contained in ¶ “177” of the amended complaint, and refer all questions of law to the Court for adjudication.

178. Deny the allegations contained in ¶ “178” of the amended complaint, and refer all questions of law to the Court for adjudication.

179. Deny the allegations contained in ¶ “179” of the amended complaint, and refer all questions of law to the Court for adjudication.

180. Deny the allegations contained in ¶ “180” of the amended complaint, and refer all questions of law to the Court for adjudication.

181. Deny the allegations contained in ¶ “181” of the amended complaint, and refer all questions of law to the Court for adjudication.

182. Deny the allegations contained in ¶ “182” of the amended complaint, and refer all questions of law to the Court for adjudication.

183. Deny the allegations contained in ¶ “183” of the amended complaint, and refer all questions of law to the Court for adjudication.

184. Deny the allegations contained in ¶ “184” of the amended complaint, and refer all questions of law to the Court for adjudication.

185. Deny the allegations contained in ¶ “185” of the amended complaint, and refer all questions of law to the Court for adjudication.

186. Deny the allegations contained in ¶ “186” of the amended complaint, and refer all questions of law to the Court for adjudication.

187. Deny the allegations contained in ¶ “187” of the amended complaint, and refer all questions of law to the Court for adjudication.

188. Deny the allegations contained in ¶ “188” of the amended complaint, and refer all questions of law to the Court for adjudication.

189. Deny the allegations contained in ¶ “189” of the amended complaint, and refer all questions of law to the Court for adjudication.

190. Deny the allegations contained in ¶ “190” of the amended complaint, and refer all questions of law to the Court for adjudication.

191. Deny the allegations contained in ¶ “191” of the amended complaint, and refer all questions of law to the Court for adjudication.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Defendant Tumolo is entitled to absolute immunity.

**THIRD AFFIRMATIVE DEFENSE**

Defendant Tumolo is entitled to qualified immunity.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred by the availability of state law remedies.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate her damages.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against the defendant Tumolo are barred because plaintiff cannot demonstrate that any of his actions caused plaintiff to suffer damages.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred, in whole or in part, by the statute of limitations.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's damages were caused or contributed to by ineffective assistance of counsel at all stages of Jeffrey Deskovic's prosecution.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's damages were caused or contributed to by professional legal malpractice committed by Jeffrey Deskovic's counsel at all stages of plaintiff's prosecution.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's damages were caused or contributed to by a conflict of interest on the part of the attorneys representing Jeffrey Deskovic during his prosecution.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's damages were caused or contributed to by the fact that the attorney representing Jeffrey Deskovic in connection with a possible *habeas corpus* petition committed professional malpractice.

**TWELFTH AFFIRMATIVE DEFENSE**

Jeffrey Deskovic's arrest and detention were lawful, privileged, and authorized by New York State CPL. § 140.10.

**THIRTEENTH AFFIRMATIVE DEFENSE**

There was probable cause to arrest Jeffrey Deskovic.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The injuries, losses, damages, and occurrences alleged in plaintiff's complaint were the result of an independent and intervening cause or causes over which the answering defendant had no control or right to control and in no way participated.

**FIFTEENTH AFFIRMATIVE DEFENSE**

If plaintiff has been injured and damaged as alleged in the complaint, such injury and damage were caused and contributed to by plaintiff's own conduct, negligence, carelessness, or want of care; and, if it be determined that plaintiff is entitled to recovery herein as against the answering defendant, such recovery should be apportioned between plaintiff and the answering defendant according to their relative responsibility therefor.

**SIXTEENTH AFFIRMATIVE DEFENSE**

If plaintiff has been damaged or injured as alleged in the complaint, and such damage or injury was not sustained solely as a result of plaintiff's own negligence, carelessness, culpable conduct, or want of care, such damage and injury were brought about by the negligence, carelessness, culpable conduct, want of care, and intentional acts of third parties over whom the answering defendant had no control and for whose negligence, carelessness, want of care, and intentional criminal acts the answering defendant is not responsible.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

If any liability is found as against the answering defendant, this liability will constitute fifty percent (50%) or less of all liability assigned to all parties liable, and, as such, the liability of



answering defendant to plaintiff for non-economic loss shall be limited, and shall not exceed answering defendant's equitable share, as provided in C.P.L.R. Article 16.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Defendant Tumolo had reasonable cause to believe that Jeffrey Deskovic had committed the crime for which plaintiff was arrested and charged.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff was not deprived of any constitutional or civil rights pursuant to any policy, practice, custom, or procedure of the City of Peekskill.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claim is frivolous.

**AS AND FOR A FIRST CROSS-CLAIM  
AGAINST DEFENDANTS WESTCHESTER  
COUNTY, DANIEL STEPHENS, LOUIS ROH,  
MILLARD HYLAND, AND GEORGE BOLEN,  
DEFENDANTS ALLEGE:**

1. If plaintiff sustained any injuries as alleged, other than through her own negligence, and if the answering defendant is found liable to plaintiff for any portion of those damages, then such liability shall derive from the carelessness, recklessness, negligence or intentional acts, or commissions or omissions, on the part of the co-defendants Westchester County, Daniel Stephens, Louis Roh, Millard Hyland, and George Bolen, without any carelessness,

recklessness, negligence or intentional acts, or commissions or omissions on the part of the answering defendant and, accordingly, the answering defendant is entitled to common-law and/or contractual indemnification over and against co-defendants Westchester County, Daniel Stephens, Louis Roh, Millard Hyland, and George Bolen for the amount of any such award.

**AS AND FOR A SECOND CROSS-CLAIM  
AGAINST DEFENDANTS WESTCHESTER  
COUNTY, DANIEL STEPHENS, LOUIS ROH,  
MILLARD HYLAND, AND GEORGE BOLEN,  
DEFENDANTS ALLEGE:**

2. If plaintiff sustained the damages in the manner and at the time and place alleged through any carelessness, recklessness, negligence or intentional acts, or commissions or omissions other than plaintiff's own, then said damages were sustained in whole or in part by reason of the carelessness, recklessness, negligence or intentional acts, or commissions or omissions on the part of co-defendants Westchester County, Daniel Stephens, Louis Roh, Millard Hyland, and George Bolen, and, if any judgment is recovered herein against the answering defendant then the answering defendant would be damaged thereby and would be entitled to contribution on the basis of apportionment of responsibility for the alleged occurrence and entitled to judgment over and against co-defendants Westchester County, Daniel Stephens, Louis Roh, Millard Hyland, and George Bolen, for all or part of any verdict or judgment that plaintiff may recover against the answering defendant, together with costs, disbursements and attorneys' fees for this action.

Dated: New York, New York  
July 10, 2008

STILLMAN, FRIEDMAN & SHECHTMAN, P.C.

By: 

James A. Mitchell [JM 4150]

425 Park Avenue

New York, NY 10022

212-223-0200

*Attorneys for Defendant Eugene Tumolo*